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9
10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. **2009-145**

14 MICHELLE DIANE PELLETIER,
15 a.k.a. MICHELLE DIANE COLEMAN
2249 Boulder Court
Alpine, CA 91901

ACCUSATION

16 Registered Nurse License No. 559075

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
23 ("Board"), Department of Consumer Affairs.

24 2. On or about August 23, 1999, the Board issued Registered Nurse License
25 Number 559075 to Michelle Diane Pelletier, also known as Michelle Diane Coleman
26 ("Respondent"). Respondent's registered nurse license was in full force and effect at all times
27 relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.
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STATUTORY AND REGULATORY PROVISIONS

Statutory Provisions

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions . . .

6. Code section 2725 states, in pertinent part:

. . . .

(b) The practice of nursing within the meaning of this chapter [the Nursing Practice Act] means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

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1 (3) The performance of skin tests, immunization techniques, and the
2 withdrawal of human blood from veins and arteries.

3 (4) Observation of signs and symptoms of illness, reactions to treatment,
4 general behavior, or general physical condition, and (A) determination of whether
5 the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal
6 characteristics, and (B) implementation, based on observed abnormalities, of
7 appropriate reporting, or referral, or standardized procedures, or changes in
8 treatment regimen in accordance with standardized procedures, or the initiation of
9 emergency procedures.

10 (c) 'Standardized procedures,' as used in this section, means either of the
11 following:

12 (1) Policies and protocols developed by a health facility licensed pursuant
13 to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and
14 Safety Code through collaboration among administrators and health professionals
15 including physicians and nurses.

16 (2) Policies and protocols developed through collaboration among
17 administrators and health professionals, including physicians and nurses, by an
18 organized health care system which is not a health facility licensed pursuant to
19 Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety
20 Code.

21 The policies and protocols shall be subject to any guidelines for
22 standardized procedures that the Division of Licensing of the Medical Board of
23 California and the Board of Registered Nursing may jointly promulgate. If
24 promulgated, the guidelines shall be administered by the Board of Registered
25 Nursing.

26 (d) Nothing in this section shall be construed to require approval of
27 standardized procedures by the Division of Licensing of the Medical Board of
28 California, or by the Board of Registered Nursing.

(e) No state agency other than the board may define or interpret the
practice of nursing for those licensed pursuant to the provisions of the chapter, or
develop standardized procedures or protocols pursuant to this chapter, unless so
authorized by this chapter, or specifically required under state or federal statute.
"State agency" includes every state office, officer, department, division, bureau,
board, authority, and commission.

Regulatory Provisions

7. California Code of Regulations, title 16, section ("Regulation") 1443
states:

As used in Section 2761 of the code, "incompetence" means the lack of
possession of or the failure to exercise that degree of learning, skill, care and
experience ordinarily possessed and exercised by a competent registered nurse as
described in Section 1443.5.

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1 8. Regulation 1471, subdivision (b), states:

2 "Organized health care system" means a health facility which is not
3 licensed pursuant to Chapter 2 (commencing with Section 1250), Division 2 of
4 the Health and Safety Code and includes, but is not limited to, clinics, home
5 health agencies, physicians' offices and public or community health services.

6 9. Regulation 1472 states:

7 An organized health care system must develop standardized procedures
8 before permitting registered nurses to perform standardized procedure functions.
9 A registered nurse may perform standardized procedure functions only under the
10 conditions specified in a health care system's standardized procedures; and must
11 provide the system with satisfactory evidence that the nurse meets its experience, training, and/

12 10. Regulation 1474 states:

13 Following are the standardized procedure guidelines jointly promulgated
14 by the Medical Board of California and by the Board of Registered Nursing:

15 (a) Standardized procedures shall include a written description of the
16 method used in developing and approving them and any revision thereof.

17 (b) Each standardized procedure shall:

18 (1) Be in writing, dated and signed by the organized health care system
19 personnel authorized to approve it.

20 (2) Specify which standardized procedure functions registered nurses may
21 perform and under what circumstances.

22 (3) State any specific requirements which are to be followed by registered
23 nurses in performing particular standardized procedure functions.

24 (4) Specify any experience, training, and/or education requirements for
25 performance of standardized procedure functions.

26 (5) Establish a method for initial and continuing evaluation of the
27 competence of those registered nurses authorized to perform standardized
28 procedure functions.

 (6) Provide for a method of maintaining a written record of those persons
 authorized to perform standardized procedure functions.

 (7) Specify the scope of supervision required for performance of
 standardized procedure functions, for example, immediate supervision by a
 physician.

 (8) Set forth any specialized circumstances under which the registered
 nurse is to immediately communicate with a patient's physician concerning the
 patient's condition.

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 (9) State the limitations on settings, if any, in which standardized

1 procedure functions may be performed.

2 (10) Specify patient record keeping requirements.

3 (11) Provide for a method of periodic review of the standardized procedures.

4 **COST RECOVERY**

5 11. Code section 125.3 provides, in pertinent part, that the Board may request
6 the administrative law judge to direct a licentiate found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
8 and enforcement of the case.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Incompetence)**

11 12. Respondent is subject to disciplinary action pursuant to Code section
12 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that in and between May
13 2006, and September 2006, while employed as a registered nurse "laser services specialist" at
14 The Sugar Spa located in San Diego, California, Respondent was guilty of incompetence within
15 the meaning of Regulation 1443, as follows:

16 a. Respondent operated outside the scope of her registered nurse license by
17 performing four laser hair removal treatments on E. M.

18 b. Respondent performed the laser hair removal treatments on E. M.
19 independently, i.e., without the supervision of a physician, and without written standardized
20 procedures.

21 c. Respondent failed to ensure that appropriate medications were available at
22 The Sugar Spa to treat burns.

23 d. On or about September 14, 2006, E. M. made two requests to see the Spa
24 physician due to intense pain she was experiencing during a laser hair removal treatment.
25 Respondent denied E. M. access to the Spa Medical Director, Dr. B., and failed to notify Dr. B.
26 of the incident involving E.M.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**


3 13. Respondent is subject to disciplinary action pursuant to Code section
4 2761, subdivision (a), in that in and between May 2006, and September 2006, while employed as
5 a registered nurse "laser services specialist" at The Sugar Spa located in San Diego, California,
6 Respondent committed acts constituting unprofessional conduct, as set forth in paragraph 12
7 above.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Revoking or suspending Registered Nurse License Number 559075, issued
12 to Michelle Diane Pelletier, also known as Michelle Diane Coleman;
13 2. Ordering Michelle Diane Pelletier, also known as Michelle Diane
14 Coleman, to pay the Board of Registered Nursing the reasonable costs of the investigation and
15 enforcement of this case, pursuant to Business and Professions Code section 125.3;
16 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 12/18/08

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21 RUTH ANN TERRY, M.P.H., R.N.
22 Executive Officer
23 Board of Registered Nursing
24 Department of Consumer Affairs
25 State of California

26
27 Complainant
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